

REFERENCE TITLE: workers' compensation; third person liability

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2194

Introduced by
Representative Konopnicki

AN ACT

AMENDING SECTION 23-1023, ARIZONA REVISED STATUTES; RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 23-1023, Arizona Revised Statutes, is amended to
3 read:
4 23-1023. Liability of third person to injured employee:
5 election of remedies
6 A. If an employee WHO IS entitled to compensation under this chapter
7 is injured or killed by the negligence or wrong of another PERSON not in the
8 same employ, ~~such~~ THE injured employee, or in event of death ~~his~~ THE INJURED
9 EMPLOYEE'S dependents, may pursue ~~his~~ THE INJURED PERSON'S remedy against
10 ~~such~~ THE other person.
11 B. If the employee WHO IS entitled to compensation under this
12 chapter, ~~or his~~ THE EMPLOYEE'S dependents, ~~does~~ DO not pursue ~~his or their~~ A
13 remedy PURSUANT TO THIS SECTION against ~~such~~ THE other person by instituting
14 an action within one year after the cause of action accrues, ~~the claim~~
15 ~~against such other person shall be deemed assigned to the insurance carrier,~~
16 ~~or to the person liable for the payment thereof.~~ OR IF AFTER INSTITUTING THE
17 ACTION, THE EMPLOYEE OR THE EMPLOYEE'S DEPENDENTS FAIL TO FULLY PROSECUTE THE
18 CLAIM AND THE ACTION IS DISMISSED, ALL OF THE FOLLOWING APPLY:
19 1. THE INSURANCE CARRIER OR SELF-INSURED EMPLOYER MAY INSTITUTE AN
20 ACTION AGAINST THE OTHER PERSON.
21 2. ANY DISMISSAL THAT IS ENTERED FOR LACK OF PROSECUTION OF AN ACTION
22 INSTITUTED BY THE EMPLOYEE OR THE EMPLOYEE'S DEPENDENTS SHALL NOT PREJUDICE
23 THE RIGHT OF THE INSURANCE CARRIER OR SELF-INSURED EMPLOYER TO RECOVER THE
24 AMOUNT OF BENEFITS PAID.
25 3. ~~Such a~~ THE claim ~~so assigned~~ may be prosecuted or compromised by
26 the insurance carrier or the person liable for the payment ~~thereof,~~ OF THE
27 CLAIM or may be reassigned in its entirety to the employee or ~~his~~ THE
28 EMPLOYEE'S dependents. After the reassignment, the employee WHO IS entitled
29 to compensation, or ~~his~~ THE EMPLOYEE'S dependents, shall have the same rights
30 to pursue the claim as if it had been filed within the first year.
31 C. THE EMPLOYEE OR THE EMPLOYEE'S DEPENDENTS SHALL PROVIDE THE
32 INSURANCE CARRIER OR THE PERSON WHO IS LIABLE TO PAY THE CLAIM A WRITTEN
33 NOTICE OF THE INTENTION TO BRING AN ACTION AGAINST A THIRD PARTY AND SHALL
34 PROVIDE THE INSURANCE CARRIER OR THE PERSON WHO IS LIABLE TO PAY THE CLAIM
35 TIMELY AND PERIODIC NOTICES OF ALL DEVELOPMENTS, RULINGS OR PROCEEDINGS
36 REGARDING THE STATUS OF THE PENDING ACTION. IN ANY ACTION INSTITUTED BY THE
37 EMPLOYEE OR THE EMPLOYEE'S DEPENDENTS, THE INSURANCE CARRIER OR THE PERSON
38 WHO IS LIABLE TO PAY THE CLAIM MAY INTERVENE AT ANY TIME TO PROTECT THE
39 INSURANCE CARRIER'S OR PERSON'S INTERESTS.
40 ~~C.~~ D. If ~~he~~ THE EMPLOYEE proceeds against ~~such~~ THE other person,
41 compensation and medical, surgical and hospital benefits shall be paid as
42 provided in this chapter and the insurance carrier or other person liable to
43 pay the claim shall have a lien on the amount actually collectable from ~~such~~
44 THE other person to the extent of such compensation and medical, surgical and
45 hospital benefits paid. This lien shall not be subject to a collection fee.

1 The amount actually collectable shall be the total recovery less the
2 reasonable and necessary expenses, including ~~attorneys'~~ ATTORNEY fees,
3 actually expended in securing ~~such~~ THE recovery. The insurance carrier or
4 person shall contribute only the deficiency between the amount actually
5 collected and the compensation and medical, surgical and hospital benefits
6 provided or estimated by ~~the provisions of~~ this chapter for ~~such~~ THE case.
7 Compromise of any claim by the employee or ~~his~~ THE EMPLOYEE'S dependents at
8 an amount less than the compensation and medical, surgical and hospital
9 benefits provided for shall be made only with written approval of the
10 compensation fund, ~~—~~ or of the person liable to pay the claim.